

Pacific States/British Columbia Oil Spill Task Force
Places of Refuge Project
Final Report
January, 2005

EXECUTIVE SUMMARY

After the *T/V Prestige* incident off the coast of Spain in late 2002, the Members of the Pacific States/BC Oil Spill Task Force recognized the possibility that a Place of Refuge incident could happen on the US/Canadian West Coast as well. They agreed to sponsor a Roundtable discussion on Places of Refuge in conjunction with their 2003 Annual Meeting. After participating in that discussion, they invited the US Coast Guard and Canadian authorities to join them in sponsoring a stakeholder workgroup to address the issue of Places of Refuge and develop recommendations.

The Places of Refuge Project Workgroup convened in February, 2004. They adopted a project charter and established a Subcommittee to develop an annex for US Area Plans that would operationalize the *Guidelines on Places of Refuge for Ships in Need of Assistance* which had been adopted by the International Maritime Organization in December of 2003.

That Subcommittee worked throughout the spring of 2004 to draft a Places of Refuge Area Plan Annex. The Project Workgroup and West Coast Area Committees reviewed the draft over the summer, and the public commented on the draft in the fall. All comments were reviewed by the Subcommittee and necessary changes made.

The Project Workgroup met in December of 2004 for a final review and edit process. They unanimously approved the final draft and recommended it to the West Coast Area Committees for use as a planning and decision-making template to address ships' requests for a Place of Refuge. They also recommended that Canadian authorities, who were in the process of drafting national guidelines to implement the IMO Guidelines, should take this document into consideration during that process. Finally, the Workgroup recommended that the member agencies of the Pacific States/BC Oil Spill Task Force endorse the Places of Refuge Annex developed by the Project Workgroup, and that their member agencies participate in its implementation and monitor its application and the efficacy of its use.

PROJECT BACKGROUND

The Tank Vessel (T/V) Prestige

A distress call was received from the *T/V Prestige* off Cape Finisterre, on the northwest coast of Spain, on November 13, 2002. The ship was experiencing a list of 30° and the Captain asked for the partial evacuation of the crew. The *T/V Prestige* was coming from St. Petersburg, Russia and bound for Singapore via Gibraltar and the Suez Canal. The vessel was transporting 77,000 tons of heavy fuel oil, of which approximately 30,000 tons were eventually spilled.

In response, 24 of the 27 members of the crew were evacuated by helicopter; the Captain, his deputy and the mechanical engineer stayed on board. The ship's engine was damaged

and the ship could not maneuver; it was drifting at the mercy of the waves. An aerial observation showed that oil was leaking from the ship.

A decision to tow the vessel further off the Spanish Coast was seen as the only alternative, since towing it to the port of La Coruña was complicated by the fact that the ship's draft was too deep for the port and making the necessary maneuvers in the heavy seas and force 9 winds might have ruptured the stricken vessel.

On November 14th, towing of the tanker began. A large crack was observed in the starboard side of the hull, from which oil was leaking. During the day European Union cooperation was requested. The Dutch salvage company SMIT was contracted by the owner. The *T/V Prestige* engine was started later in the day and the ship made some headway by its own means, although tow lines were made ready.

On the morning of November 15th the tanker was located 60 nm off the coast, the engine was stopped, and the ship was being towed to the South. The crack in the hull was estimated to be 35 m long below the water line; major leaks were observed. The last members of the crew left the ship that afternoon while it was still under tow. On the coast, oil slicks had stranded on the shore between La Coruña and Cape Finisterre; protection by booms was initiated and response organizations were hired to conduct cleanup operations on the shore.

On November 17th the *Prestige* was stopped 75 nm West of Cape Finisterre. Aerial observations reported major leaks from its hull and a string of oil slicks aligned along its route. On the shore, Oil Spill Response, Ltd. had opened the first cleanup site with the assistance of local fishermen. The next day, the *T/V Prestige* was located 99 nm off Cape Finisterre, and no more leaking was observed. The towing by SMIT was in effect, and on-water recovery efforts were underway as were onshore cleanup operations.

On November 19th, the hull ruptured around 8am and the stern sank about four hours later, followed by the bow. The rupture and sinking occurred at 133 nm West/South West of Cape Finisterre in waters 3500 m deep. The stern section still held more than 20 million gallons of fuel oil, nearly twice as much as was spilled in the *Exxon Valdez* oil spill in 1989.

A Places of Refuge Roundtable sponsored by the Pacific States/BC Oil Spill Task Force

Following the *T/V Prestige* incident, the Members of the Pacific States/British Columbia Oil Spill Task Force reviewed an internal report on Places of Refuge incidents and issues, and agreed to host a roundtable discussion on the issue in conjunction with their 2003 Annual Meeting. The title of the Roundtable was *Places of Refuge: What Decisions are Needed, Who will make them, and When?*

Anil Mathur, President of the Alaska Tanker Company, provided the keynote address. Mr. Mathur called for planning rather than pre-designation of specific places, and for acceptance and use by all of one set of guidelines, referring primarily to the IMO guidelines. He recommended that Area Committees develop contingency plans to help authorities follow the guidelines when managing requests for assistance.

A panel of experts addressed the "Technical Elements of Decisions regarding Places of Refuge." These panelists included Dick Fairbanks of Titan Maritime LLC, who represented the salvor's perspective. LT Sarah Scherer of the National Oceanic and Atmospheric Administration and Fred Beech of Environment Canada addressed environmental considerations. Norman Meade

from NOAA's Damage Assessment Center addressed economic considerations, and Patrick Torres, the Honolulu Harbormaster, described issues that his port would want considered.

A second panel, representing "Unified Command" players, included Paul Revere, President of SeaRiver Maritime, Inc.; Gordon Macatee, Deputy Minister for the BC Ministry of Water, Land, and Air Protection; Carlton Moore, Administrator of California's Office of Spill Prevention and Response; LCDR Paul Albertson of the US Coast Guard Office of Response; and Don Rodden for the Canadian Coast Guard Pacific Region. Among other points, they agreed that any decision-making process should address small incidents as well as major ones, as well as incidents involving bunker fuel, not just hazardous cargos. While everyone agreed that final authority rests with the US and Canadian Coast Guards (now Transport Canada), it was also understood that state and local officials bring local knowledge to the decision-making process and that a Federal On-Scene Coordinator should incorporate their input.

A detailed summary of the Places of Refuge Roundtable is posted at:
http://www.oilspilltaskforce.org/notes_refuge_2003.htm.

IMO's Places of Refuge Guidelines

The International Maritime Organization (IMO) adopted Resolution A.949 (23), *Guidelines on Places of Refuge for Ships In Need of Assistance*, at their 23rd Session in December of 2003. IMO favored pre-designated sites when they first addressed this issue after the *T/V Castor* incident, but that approach changed after the *T/V Prestige* spill, and the topic was assigned to IMO's Navigation Subcommittee to address in their 49th session (NAV 49).

The stated purpose of the Guidelines is "to provide Member Governments, shipmasters, companies, and salvors with a framework enabling them to respond effectively and in such a way that, in any given situation, the efforts of the shipmaster and shipping company concerned and the efforts of the government authorities involved are complementary. In particular, an attempt has been made to arrive at a common framework for assessing the situation of ships in need of assistance."¹

The emphasis in the Guidelines is on the authority of the coastal state to make the final decision, considering all necessary information and expert guidance. Liability for the costs of dealing with the vessel and any environmental damage was a controversial topic, and one which IMO asked their Legal Committee to address, since it is not addressed in the Places of Refuge Guidelines adopted in 2003. The IMO Guidelines are voluntary, and are only a tool for decision-making. IMO recognizes that every incident is unique and may not conform exactly to the guidelines.

Both the Canadian and US Coast Guards will serve as the "Maritime Assistance Service" for Canada and the US respectively, as envisioned in the IMO Guidelines.

The IMO *Guidelines on Places of Refuge for Ships In Need of Assistance* are available at: [Res. A.949\(23\)](#)

¹I:\ ASSEMBLY Y\23\RES\949.doc

PROJECT NARRATIVE

The Oil Spill Task Force Sponsors a Stakeholder Workgroup

Following the Places of Refuge Roundtable discussion, the Pacific States/BC Oil Spill Task Force Members agreed to form a stakeholder workgroup in partnership with United States Coast Guard (USCG) and Canadian authorities. The Canadian Coast Guard and Transport Canada both agreed to participate and the USCG Pacific Area agreed to co-chair the workgroup.

CAPT Rob Lorigan, Chief of the Marine Safety Division, US Coast Guard Pacific Area, agreed to serve as Workgroup Co-Chair on behalf of the USCG. Linda Pilkey-Jarvis, Manager of the Preparedness Section of the Spills Program at the Washington Department of Ecology, agreed to represent the Task Force as Co-Chair. Jean Cameron, Task Force Executive Coordinator, worked with the Co-Chairs through the fall of 2003 to define the project goals and recruit workgroup members.

Final Project Workgroup membership included representatives of all Task Force member agencies, all USCG Pacific Area Districts, Transport Canada Marine Safety, the Canadian Coast Guard, Environment Canada, the Port of Vancouver, BC, the Western States Petroleum Association, the American Waterways Operators, the Council of Marine Carriers of Canada, Teekay Shipping Canada Ltd, the Pacific Merchants Shipping Association, the British Columbia Chamber of Shipping, and the Columbia River Steamship Operators' Association. Public interest organizations participating included the Cook Inlet Regional Citizens' Advisory Council, the Prince William Sound Regional Citizens' Advisory Council, and the David Suzuki Foundation of BC. Observers represented the US Coast Guard's Office of Response in Washington, DC and Transport Canada's Office of Navigation Safety & Radio Communication, Ships & Operations Standards in Ottawa. For a complete listing of the Places of Refuge Project Workgroup members, please reference Appendix I.

The Workgroup's Initial Meeting and Adoption of a Project Charter

The Places of Refuge Project Workgroup convened their first meeting on February 2-3, 2004. After reviewing the *T/V Prestige* incident and the Places of Refuge Guidelines adopted by IMO, they discussed and agreed to key elements of a Project Charter.

The Charter lists the Places of Refuge Project Workgroup members, states the purpose and the scope of the project, and lists objectives and deliverables.

The purpose of the Places of Refuge Project Workgroup, as stated in the Charter, is to develop a decision-making process that will provide guidance for:

- 1) Evaluating a request for a Place of Refuge from a ship in need of assistance in a situation, apart from one requiring rescue of persons on board, that could give rise to loss of the vessel or an environmental or navigation hazard; and
- 2) Assessing and minimizing potential economic and environmental impacts associated with such hazards.

The Charter further states that the decision-making process would be consistent with and "operationalize" the Guidelines on Places of Refuge for Ships in Need of Assistance adopted by the 23rd IMO Assembly, and would thus provide a framework for implementing those guidelines.

Regarding scope, the Charter states that "The Places of Refuge Workgroup's recommendations will address "Places" of Refuge, which can include ports as well as areas

providing sufficient shelter and protection so that temporary repairs may be made. The terms "Harbors of Safe Refuge" and "Safe Havens" are presumed to be synonymous with "Places of Refuge." It also states that the Places of Refuge Project Workgroup recommendations will be adaptable to situations occurring either offshore, near the shore, or in internal waters.

The Workgroup's Charter further established that their recommendations would "address transboundary concerns as they apply across national boundaries, state boundaries, and the boundaries of Area Committee jurisdictions."

The Project Charter, signed by the Co-Chairs in April of 2004, is available at: http://www.oilspilltaskforce.org/docs/project_reports/RefugeCharter.pdf

Development of the Places of Refuge Annex

One of the Project Workgroup's objectives was to "operationalize" the IMO guidelines on Places of Refuge as a decision-making tool that could be applied consistently on the West Coast, in both the US and Canada, in order to facilitate the best possible decisions during a Place of Refuge response situation. The Workgroup established a subcommittee to develop that "tool", i.e., an Area Plan Annex. Subcommittee members included USCG CAPT Lorigan, USCG CDR Frank Shelley, USCG CDR Bill Whitson, Linda Pilkey-Jarvis, John Bauer of the Alaska Dept. of Environmental Conservation, Don Rodden of the Canadian Coast Guard, and CAPT John Yeung of Transport Canada. Ion Ionescu of Transport Canada joined CAPT Yeung later in the Subcommittee process.

John Bauer developed the first draft of the annex and the Subcommittee then worked through a number of drafts during the spring, convening by conference call and email.

The USCG Pacific Area submitted a draft to the West Coast Area Committees and Captains of the Port for their comment in late June. The Workgroup was also provided with a review copy at this point. Comments were received during this phase from: USCG District 17; Yvette Myers for the Port of Vancouver; Rick Holton of CONOCO; Matt Bernard from USCG District 13 and Marine Safety Office Puget Sound; John Yeung, Transport Canada; the Marine Safety Office, San Francisco Bay; Ed Irish for the Western States Petroleum Association's Marine Committee; and Mike Zollitsch for the Oregon Department of Environmental Quality.

The Subcommittee reconvened by email and conference call in September to review these comments and to amend the draft as appropriate. The Subcommittee also reviewed the Alaska Regional Response Team's Places of Refuge Guidelines and incorporated certain aspects not already covered in their draft. The revised draft was then posted on the Oil Spill Task Force website and public comments were invited. Comments were received during this phase from a private citizen from Port Clements, BC; Transport Canada; the American Salvage Association; USCG District 14; Rick Bryant of the BC Chamber of Shipping; the NW Area Committee & RRT; the British Columbia Coast Pilots; the Chamber of Shipping of America; and the Alaska Tanker Company. Once again, the Subcommittee met by conference call and reviewed these comments, making edits as they deemed appropriate. The final result was then presented to the Project Workgroup for their review, comment, and adoption at their final meeting on December 6th, 2004.

The Workgroup's Final Meeting and Adoption of the Area Plan Annex

The Places of Refuge Project Workgroup convened their final meeting on December 6, 2004. After reviewing the Project Background and Subcommittee process, they discussed the final draft Places of Refuge Area Plan Annex. CDR Frank Shelley used a PowerPoint presentation to lead the Workgroup through a discussion of the draft annex. Key points from that discussion included:

- Regarding whether there were any legal issues associated with the annex, it was explained that the language in the "Definitions" and "Jurisdiction" sections was based on legal reviews at USCG Headquarters.
- The Workgroup noted that a ship owner involved in a transboundary incident may face different liability schemes in the US and Canada. Liability limits would not be a basis for encouraging a stricken vessel to travel coastwise to a specific nation for the purpose of seeking a place of refuge.
- Regarding US and Canadian requirements for 96-hour Advance Notice of Entry, waivers are possible in "force majeure" situations.
- Existing Memorandums of Understanding as well as the Joint US/Canada Contingency Plans (JCP) and their regional annexes provide the foundation for implementing transboundary coordination on this issue. Transport Canada (TC) is working with Environment Canada and the Department of Fisheries and Oceans (Canadian Coast Guard) on a Memorandum of Understanding (MOU) which would clarify their operating relationships. Once completed, TC would be officially tied into the Joint Contingency Plan. Existing consultation mechanisms would be used to review the JCP and the geographic annexes to determine whether any changes are necessary with regard to Places of Refuge. The USCG Office of Response would initiate changes to the JCP as necessary from the US perspective.
- With regard to coordination between US planning areas, an incident involving multiple COTPs within one District would be handled by the District Commander through a Regional Incident Command (RIC). If more than one District were involved, the Area Commander would make decisions and a Regional Incident Command (RIC) or a National Incident Command (NIC) could be established to provide coordination of information and resources.

After their review and edit process, the Workgroup members voted unanimously to pass the following motion:

The Places of Refuge Project Workgroup adopts the Places of Refuge Annex for Area Plans and recommends the following actions:

- That the US Coast Guard Pacific Area advise the Area Planning Committees for the Pacific Northwest, California, and Hawaii of the availability of this Places of Refuge Annex for consideration and possible adoption into their respective Area Contingency Plans as a template for pre-planning and decision-making to address requests from ships in need of assistance for Places of Refuge (noting that Alaska has already done so); and

- That the Canadian Coast Guard and Transport Canada take into consideration the planning and decision-making guidelines in this annex as they develop Canada's policies and procedures to implement IMO's Guidelines on Places of Refuge; and
- That the Pacific States/British Columbia Oil Spill Task Force Members endorse the Places of Refuge Annex developed by the Project Workgroup, and that their member agencies participate in its implementation by the Area Committees and monitor its application and the efficacy of its use.

OVERVIEW: THE PLACES OF REFUGE AREA PLAN ANNEX

The Places of Refuge Area Plan Annex is available at (insert web address). A summary follows:

The Purpose Statement of the Places of Refuge Area Plan Annex identifies four objectives:

1. To operationalize the IMO Guidelines;
2. To provide a decision-making process for responding to Places of Refuge incidents;
3. To provide a template that Area Committees can use to pre-identify information on possible Places of Refuge; and
4. To apply existing transboundary and cross-jurisdictional procedures when necessary.

The main body of the annex provides the decision-making guidelines and the appendices provide for pre-planning to support that decision-making in the US.

As noted in the Introduction section, providing a Place of Refuge may be the best action with regard to environmental protection and public safety. Nevertheless, each decision is case-specific. Although potential places of refuge may be pre-identified and information collected, no pre-identified place would be used unless, when weighed against other alternatives, it was the best choice. Although the Annex acknowledges the role of a ship's master in the process, it primarily focuses on the IMO guidelines as they relate to decision-making by authorities since it is designed as an Area Plan annex. The annex commits to the use of the Incident Command System (ICS) as established in the US National Response Plan.

The Definitions section of the Annex incorporates definitions used in the IMO guidelines as well as others adapted specifically for this annex.

The Jurisdiction section outlines the authority of federal, state, and local agencies as well as that of the master of the ship. The text as drafted applies in the US and will be adapted for Canada as necessary.

The section titled "Management Structure to address Places of Refuge" notes that a USCG Captain of the Port (COTP) would consult with appropriate federal, state, and local authorities when time allows, and may activate a Unified Command. If there is no time, the COTP should make the decision.

The Decision-Making Process involves two phases: First, one for weighing each of the five options of a vessel remaining in the same position, continuing its voyage, being towed further out to sea, being intentionally scuttled, or being directed to a place of refuge; and second, a decision-making process to weigh which place of refuge would be best.

Step 1 of the Decision-Making Process describes the information that a vessel master would provide when s/he initiates the request for refuge.

Step 2 notes that a USCG Captain of the Port (COTP) would set up a Unified Command (UC) whenever time allows. It also outlines the first response steps which would be taken to respond to the emergency nature of a Places of Refuge situation.

Step 3 identifies five categories of factors (human health and safety; the environment; the ship's status and risks; response and salvage resources; and "other command and management factors") which would be used to evaluate the five options of a vessel remaining in the same position, continuing its voyage, being towed further out to sea, being intentionally scuttled, or being directed to a place of refuge.

If a place of refuge is the chosen option, then Step 4 provides more detailed checklists for the COTP or UC to use in evaluating which place of refuge would be best.

As noted previously, the appendices to the Annex are templates for pre-planning, allowing area committees to gather crucial information in advance that would be useful in the event of an actual place of refuge incident. Appendix I provides for 24/7 contact information for potential stakeholders such as trustee land managers, tribes, port authorities, harbor safety committees, or maritime pilot organizations.

Appendix II provides a planning checklist for the types of information about potential places of refuge which would aid the decision-makers. Area Committees are encouraged to establish workgroups to collect this information and, in the process, pre-identify all such places within their planning areas.

CONCLUSION

The USCG Pacific Area Marine Safety Division will forward the Places of Refuge Annex to each of the Pacific Area districts, acknowledging the collaborative effort behind the document and encouraging them to disseminate it to their units for incorporation into area plans. They will also be encouraged to expedite completion of Appendix II for pre-planning, and to provide comments on the value of the document in response planning, drilling, and actual events. CAPT Lorigan will customize his cover letters to USCG District 11 for Mexico as well as District 17 and District 13 for Canada to note relevant transboundary issues. He also agreed to copy the USCG Headquarters' Office of Response and USCG Atlantic Area, which will allow them access to the annex.

The USCG Office of Response is planning to send guidance "to the field" regarding implementation of the IMO Places of Refuge Guidelines.

With regard to next steps by Transport Canada and the Canadian Coast Guard, there are three federal agencies which would be involved in Places of Refuge issues in Canada:

- Transport Canada (TC) has the lead responsibility, and would make the final decision;
- The Department of Fisheries and Oceans (DFO) through the Canadian Coast Guard (CCG) has the Maritime Assistant Services (MAS) responsibility through the appropriate Marine Communications and Traffic Services (MCTS) centre; and
- Environment Canada (EC) would provide scientific support services.

Draft national guidelines are being developed by Transport Canada's Marine Branch and will involve input from Headquarters as well as the five regions. Draft guidelines will be circulated to DFO, EC and other key stakeholders for comments. Canadian ports also have federal legislative authority under the Canada Marine Act during Places of Refuge decisions,

and will be included in the consultative process. After finalization by TC, each region and the other departments will take any action necessary to implement the guidelines. Transport Canada's position is that there is nothing in this Places of Refuge Area Plan Annex that Transport Canada objects to, but as of December 2004 they are not in a position to formally recommend or approve the document, since the Canadian national guidelines and associated policies are still under development. CAPT Yeung assured the Workgroup members that the Canadian "National Guidelines for Responding to a Request for a Place of Refuge" will take into consideration both IMO's Guidelines on Places of Refuge for Ships in need of Assistance as well as this Places of Refuge Annex for US Area Contingency Plans.

Regarding the Pacific States/BC Oil Spill Task Force, the Members will be asked to sign a resolution endorsing the Annex. In addition, a project report and the final Annex will be posted on the Task Force's website (www.oilspilltaskforce.org).

Appendix I
Places of Refuge
Project Workgroup Members

Co-Chair: CAPT Rob Lorigan, Chief, Marine Safety Division US Coast Guard Pacific Area,
Co-Chair: Linda Pilkey-Jarvis, Washington Department of Ecology; Stan Norman, alternate
Leslie Pearson, Alaska Department of Environmental Conservation; John Bauer, Alternate
Heather Taylor, BC Ministry of Water, Land, and Air Protection
Mike Zollitsch, Oregon Department of Environmental Quality
Bud Leland, California Office of Spill Prevention & Response
Curtis Martin, Hawaii Department of Health
James Lawson, Transport Canada Marine Safety; CAPT John Yeung, alternate
Ion Ionescu, Transport Canada Marine Safety
Don Rodden, Canadian Coast Guard Rescue, Safety, and Environmental Response
Fred Beach, Emergencies Section, Environment Canada
CAPT Paula Carroll, Chief Marine Safety, US Coast Guard District 14
CDR William Whitson, US Coast Guard District 13
Timothy Holmes, US Coast Guard District 11; CDR Jeff Brager, Alternate
CDR Spencer Wood, US Coast Guard District 17; CDR Chris Myskowski, Alternate
CAPT Yvette Myers, Harbor Master, Port of Vancouver, BC
CAPT Ed Irish, Western States Petroleum Association; Frank Holmes, Alternate
Jerry McMahon, American Waterways Operators, Pacific Region
CAPT Phill Nelson, Council of Marine Carriers
Bikramjit Kanjilal, Teekay Shipping Canada Ltd.; Howard Seto, alternate
CAPT Michael Moore, Pacific Merchants Shipping Association
Rick Bryant, British Columbia Chamber of Shipping
CAPT James R. Townley, Jr., Columbia River Steamship Operators' Association
Mike Munger, Cook Inlet Regional Citizens' Advisory Council
Bill Conley, Prince William Sound Regional Citizens' Advisory Council; John Devens, alternate
Heather Deal, David Suzuki Foundation

Observers

CAPT Joe Saboe, Commander, US Coast Guard Office of Response; LCDR Paul Albertson,
alternate
Robert Turner, Manager, Navigation Safety & Radio Communication, Ships & Operations
Standards